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6600 SEARS TOWER  
CHICAGO IL 60606-6473

In re Application of  
FLEISCHER et al.  
Application No.: 10/585,809  
PCT No.: PCT/EP2005/000745  
Int. Filing Date: 26 January 2005  
Priority Date: 26 January 2004  
Attorney Docket No.: P06,0247  
For: METHOD, DEVICE, COMPUTER  
SYSTEM AND COMPUTER PROGRAM  
PRODUCT FOR CONTROLLING A  
MATERIAL FLOW

DECISION ON PETITION

UNDER

37 CFR 1.497(d)

This decision is in response to applicants' renewed petition under 37 CFR 1.497(d) filed 11 January 2008.

**BACKGROUND**

On 26 January 2005, applicant filed international application PCT/EP2005/000745, which designated the United States and claimed a priority date of 26 January 2004. A copy of the international application was communicated to the USPTO from the International Bureau on 29 September 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 26 July 2006.

On 13 July 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 02 April 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage were required.

On 13 April 2007, applicant filed the surcharge under 37 CFR 1.492(h) and a declaration of inventors identifying and executed by five inventors.

On 27 August 2007, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating that four of the five inventors listed on the declaration are not listed in the international application.

On 17 September 2007, applicants filed a submission which was properly treated as a petition under 37 CFR 1.497(d). The petition was accompanied by statements by Uve Czempik, Wolfram Keil, Christian Reckzeh, and Markus Wimmer, a consent of assignee statement, and the surcharge under 37 CFR 1.492(h).

On 04 January 2008, a decision was mailed dismissing without prejudice applicants' petition under 37 CFR 1.497(d) because a showing under 3.73(b) has not been made.

On 11 January 2008, applicants filed the instant renewed petition under 37 CFR 1.497(d) which was accompanied by a copy of an assignment.

### DISCUSSION

37 CFR 1.497(d), provides:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, or if a change to the inventive entity has been effected under PCT Rule 92<sup>bis</sup> subsequent to the execution of any oath or declaration which was filed in the application under PCT Rule 4.17(iv) or this section and the inventive entity thus changed is different from the inventive entity identified in any such oath or declaration, applicant must submit:

- (1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;
- (2) The processing fee set forth in Sec. 1.17(i); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see Sec. 3.73(b) of this chapter); and
- (4) Any new oath or declaration required by paragraph (f) of this section.

As noted in the decision mailed 04 January 2008, items (1) and (2) have been satisfied and items (4) is not required.

Item (3) has now been satisfied.

The declaration of inventors filed 13 April 2007 is in compliance with 37 CFR 1.497(a)-(b).

### CONCLUSION

The request under 37 CFR 1.497(d) is GRANTED for the reasons set forth above.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application in accordance with this decision including processing the application in the name of Helmut Fleischer, Uve Czempik, Wolfram Keil, Christian Reckzeh, and Markus Wimmer as inventors.

/Daniel Stemmer/

Daniel Stemmer  
Legal Examiner  
PCT Legal Affairs  
Office of Patent Cooperation Treaty  
Legal Administration  
Telephone: (571) 272-3301  
Facsimile: (571) 273-0459